IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 6632 of 2000

S.H.Naik ..Petitioner

vs.

1. The Hon'ble District
& Sessions Judge, Thane
and others ..Respondents.

Shri R.S.Apte for petitioner.
Shri N.P.Deshpande, A.G.p. for respondent nos. 1 to 3.

CORAM: S.B.MHASE &
S.R.DONGAONKAR. JJ.
28th February, 2006

P.C.

1. By this petition, the petitioner has challenged the order passed by the District Judge, Thane on 14th December, 1998 in DE No.11 of 1997 whereby the petitioner was punished and reverted. The petitioner has also challenged the order passed by the High Court on Administrative Side on 19th January, 2000 wherein the order passed by the District Judge was under challenge by way of an Administrative Appeal. Both the learned counsel now accept and submit that since no personal hearing was given to the petitioner while considering the administrative appeal as held by the Full Bench of this Court in the case of **Anil Amrut Atre Vs. District and**

Sessions Judge, Aurangabad reported in 2002(3) Mh.L.J.750, the order passed by the Appellate Authority is not sustainable. Both the learned Counsel, therefore, request that the order dated 19th January,2000 passed by the High Court on its administrative side be set aside and remit the matter to the Appellate Authority for appropriate decision. We have gone through the Full Bench decision of this Court wherein it was held that Rule 23(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 mandates the Appellate Authority to consider whether the provision of the Rule has been followed. The expression "consider" in rule 23(2) will include within its sweep application of mind, personal hearing and recording of reasons. It is obligatory on the Appellate Authority to apply its mind and to pass an appropriate speaking order after affording personal hearing to the delinquent. In view of this we find it amply clear to set aside the order dated 19th January, 2000 passed by this Court on its Administrative Side and remit the matter to the Appellate Authority for appropriate decision. We, therefore, pass the following order.

. Petition is partly allowed.

. The order dated 19th January, 2000 passed in Administrative Appeal (No.B-1 Br.) filed by the petitioner against the order dated 14th December, 1998 passed by the District Judge, Thane is hereby set aside. The administrative appeal is restored. The Appellate Authority shall hear the petitioner after giving due notice and thereafter shall pass appropriate order on its own merits.

. All contentions of the petitioner are kept open to be argued before the Appellate Authority.

(S.R.DONGAONKAR J.) **(S.B.MHASE J.)**